CHIN SEN WAH v. PUBLIC PROSECUTOR.

[A. Cr. J. (Rigby J.) December 6, 1957]

[Penang — Criminal Appeal No. 50 of 1957]

Gaming — Public lottery — Assisting in carrying on — Determination — Expert evidence — Common Gaming Houses Ordinance, 1953, s. 4(1)(c).

Where an accused person is charged with the offence of assisting in the carrying on of a public lottery, contrary to section 4(1)(c) of the Common Gaming Houses Ordinance, 1953, the ultimate responsibility of determining whether or not there is a public lottery rests with the Magistrate. He does that with the assistance of such experts as may be called before him to explain what the lottery is, how it is run, and how the facts adduced and the exhibits produced in the case before him establish in the opinion of the expert the existence of a public lottery. But it is for the Magistrate to form his decision in the light of the evidence given by the expert.

Cases referred to :—

(1) *Ang Chwee Keong v. R.* (1955) M.L.J. 36.

(2) *Public Prosecutor v. Lee Ee Teong* (1953) M.L.J. 244.

(3) *Sim Ah Seng v. R.* (1951) M.L.J. 150.

(4) *R. v. Carr-Bryant* (1943) K.B. 607.

MAGISTRATE'S CRIMINAL APPEAL.

W. A. S. B. Goh for the appellant.

H. S. Ong (Federal Counsel) for the respondent.

Rigby J. : — The appellant in this case was convicted by the Magistrate of assisting in the carrying on of a public lottery, to wit, 100 and 1,000 illegal character lottery, contrary to section 4(1)(c) of the Common Gaming Houses Ordinance, 1953, and sentenced to one month's imprisonment together with a fine of $1,000.

The learned Deputy Public Prosecutor, with great fairness, has said that he does not feel that he is able to support this conviction having regard to the authorities of *Ang Chwee Keong v. Regina*[1], *Public Prosecutor v. Lee Ee Teong*[2] and *Sim Ah Seng v. Rex*[3]. In all these cases it has been laid down that the ultimate responsibility of determining whether or not there is a public lottery rests with the Magistrate and he does that, of course, with the assistance of such experts as may be called before him to explain what the lottery is, how it is run, and how the facts adduced and the exhibits produced in the case before him establish in the opinion of the expert the existence of a public lottery. But it is for the Magistrate to form his decision in the light of the evidence given by the expert.

In the present case the expert called before the Court gave a general explanation as to how the 100 and 1,000 illegal character lottery was run. Then, however, turning from the general to the particular, he simply said, in reference to the exhibits produced in the case :—

"I came to the conclusion that they belong either to an organiser or collector of bets of 100 and 1,000 numbers lottery."

No attempt was made by him to explain in detail the nature of the exhibits found and the grounds on which he based his opinion that those exhibits belonged either to an organiser or collector of bets of 100 and 1,000 numbers lottery. Adopting the words of Spenser Wilkinson J. in the case of *Ang Chwee Keong v. Regina*[1] :—

"It was the duty of the Magistrate in this case to look at these documents and decide for himself, of course with the assistance of the expert, whether or not those documents were accounts, memoranda or records of stakes or wagers relating to a lottery within the meaning of Section 11 of the Ordinance. He appears to me to have relied entirely upon the bare expression of opinion of the expert . . . . ."

As Brown Ag. C.J., Singapore, said in the case of *Sim Ah Seng v. Rex*[3] :—

"But a bare expression of his (the expert's) opinion has no evidential value at all. Unless he gives an explanation which supplies the understanding of the subject which the Court lacks, the Court is in no better position than it was before to determine the question which it is the duty to determine, and if the Court acts upon a bare expression of the expert's opinion the determination of the question becomes that of the expert and not of the Court."

Lastly, I would only quote a passage from the judgment of Thomson J. (as he then was) in *Public Prosecutor v. Lee Ee Teong*[2] in which he stated :—

"I know, and the Magistrate knows, all about the 1,000 character lottery; so for that matter do the majority of the adult inhabitants of this country. There is not the slightest room for doubt that it is a lottery within the meaning of the Common Gaming Houses Enactment. Unfortunately, however, it is not open to any Judge or Magistrate to import his personal knowledge on the point into a criminal trial so as to help out evidence for the prosecution which would otherwise be inadequate to support a conviction."

For these reasons the appeal is accordingly allowed, the conviction quashed and the sentence set aside.

I would only add that the evidence upon the record in this case is certainly equally consistent with the defence raised by the appellant that he was not assisting in the carrying on of this illegal lottery but simply a punter on his own behalf. Whilst it is perfectly true that under section 11 of the Ordinance where a person is found in possession of ten or more lottery tickets or of any account, memorandum or record of stakes or wagers in relation to a lottery a presumption arises against him, until the contrary is proved, that he is assisting in a public lottery, it is clear from the established authorities that the onus of rebutting that presumption is not as high upon the defence as it is upon the prosecution to prove a criminal charge beyond reasonable doubt. (See *R. v. Carr-Bryant*[4]). The appeal is allowed, the conviction quashed and the sentence set aside.

Appeal allowed.

Solicitors : *Shearn Delamore & Co.*